

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HAROLD B. WILSON,)	4:11CV3215
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
DIANE SABATKA-RINE, et al.,)	
)	
Defendants.)	

This matter is before the court on Defendants’ Motion to Suspend Progression Order Deadlines. (Filing No. [58](#).) In the Motion, Defendants ask the court to suspend the progression order deadlines set forth in the court’s October 10, 2012, Memorandum and Order, because they have moved for Summary Judgment based on qualified immunity. (*Id.*) Qualified immunity “is an immunity from suit rather than merely a defense to liability.” [Mitchell v. Forsyth, 472 U.S. 511, 526 \(1985\)](#). Accordingly, it is important that the question of qualified immunity be resolved as early as possible in the proceedings. [O’Neil v. City of Iowa City, 496 F.3d 915, 917 \(8th Cir. 2007\)](#).

Upon review of the pleadings, the court will grant Defendants’ Motion to Suspend Progression Order Deadlines. No further pleadings shall be filed without the court’s leave. In addition, the Final Pretrial Conference that has been scheduled for April 25, 2013, is canceled and Defendants are temporarily relieved from preparing a draft of a proposed Order on Final Pretrial Conference. A separate progression order resetting the dates for the Final Pretrial Conference, and all associated deadlines, may be entered after the court resolves the pending Motion for Summary Judgment.

Also pending is Plaintiff’s Motion for Sanctions (filing no. [49](#)) and Objection to Interrogatories and Motion to Voluntarily Dismiss (filing no. [51](#)). Defendants have

filed a Brief in Response to Plaintiff's Motions. (Filing No. [53](#).) In these Motions, Plaintiff complains that Defendants have not answered his Interrogatories, asks the court to compel Defendants to answer his Interrogatories, and asks the court to order Defendants to withdraw their Interrogatories. (Filing Nos. [49](#) and [51](#).) In response, Defendants argue that Plaintiff has failed to comply with [NECivR 7.1\(i\)](#), which provides that this court will only consider a discovery motion in which the moving party shows that, after personal consultation with opposing parties and sincere attempts to resolve differences, the parties cannot reach an accord. (Filing No. [53](#).)

After careful review, the court finds that Plaintiff has failed to show that he consulted with Defendants' counsel to resolve any dispute regarding the parties' Interrogatories. Plaintiff's discovery requests are therefore denied.

Separately, Plaintiff has moved to voluntarily dismiss Defendants "Joe Zarate, Kim Cockrell, Samuel Grove, Damian Hoesing[,] and Steve Fannon[,] because these Defendants were not "involved at all in the issues before the court." (Filing No. [51](#) at CM/ECF p. 2.) Defendants have stipulated to the dismissal of these Defendants. (Filing No. [53](#).) Accordingly,

IT IS THEREFORE ORDERED:

1. Defendants' Motion to Suspend Progression Order Deadlines (filing no. [58](#)) is granted. No further pleadings shall be filed without the court's leave.
2. Plaintiff's Motion for Sanctions (filing no. [49](#)) is denied.
3. Plaintiff's Objection to Interrogatories and Motion to Voluntarily Dismiss (filing no. [51](#)) is granted only to the extent of the voluntary dismissal of certain Defendants, and it is otherwise denied.

4. Plaintiff's claims against Defendants Joe Zarate, Kim Cockrell, Samuel Grove, Damian Hoelsing, and Steve Fannon are dismissed without prejudice.

5. The Clerk of the court shall cancel the Final Pretrial Conference in this matter that is currently scheduled for April 25, 2013. A separate progression order resetting the date for the Final Pretrial Conference, and all associated deadlines, may be entered after the court resolves the pending Motion for Summary Judgment.

DATED this 12th day of March, 2013.

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge

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